

Application Number: 09/814,415

Type of Response: Amendment

Attorney Docket Number: 10.007C1

Response Submission/Mailing Date: 1-17-2007

**REMARKS**

In response to the above-identified Office action, Applicant amends claims 1, 12 and 23, cancels claim 31, and adds a new claim 32 as shown above. No new matter has been introduced by way of these amendments. As such, claims 1-30 and 32 are now pending. In view of the amendments and the following remarks, Applicant respectfully requests reconsideration and allowance of claims 1-30 and 32.

Applicant appreciates the Office's acknowledgement that the declaration submitted under 37 CFR § 1.131 has been accepted and that the Albert et al. reference has been disqualified from being considered prior art.

The Office provisionally rejects claims 1-31 as being unpatentable over claims 1-41 of co-pending application no. 10/150,422 ("422 co-pending application") under the judicially created doctrine of obviousness-type double patenting. In view of the amendments made to independent claims 1, 12 and 23, the Office is respectfully requested to reconsider and withdraw this rejection. Specifically, independent claim 1, for example, recites "a flow state communication channel ... that is independent of one or more associated data flows ... [and] ... makes available flow handling information related to the unassociated flow ...."

At least this particular feature distinguishes independent claim 1 from the instant application from the independent claims of the '422 co-pending application. Independent claims 12, 23 and 32 in this application

recite the same feature in similar form and therefore are patentably distinct in the same manner. Since claims 2-11, 13-22, and 24-30 depend from and include the subject matter recited in claims 1, 12, and 23, respectively, they are patentably distinct at least for the same reasons discussed above.

The Office also rejected claims 1-31 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,875,654 to Hegde ("Hegde") in view of U.S. Patent No. 6,263,368 to Martin ("Martin"). The Office generally asserts that the teachings in Hegde, relating to directing communications over a network, generally disclose all of the limitations recited in independent claims 1, 12, 23 and 31.

The Office concedes that Hegde fails to disclose or suggest the features recited in claims 1, 12, 23 and 31 relating to independently scaling the switching and control components. The Office asserts, however, that Martin discloses load balancing among a group of server in a server cluster using independently adjustable switching/controlling components to meet the required load in directing data flows (Abstract, FIGS. 3-4, 8-10 and col. 4, line 35- col. 5, line 29). The Office reasons that it would have been obvious to modify Hegde's teachings relating to detecting unassociated data flows by applying Martin's teachings relating to the flow component/dispatcher components to provide efficient switching and for handling network traffic load.

Applicant has amended claims 1, 12, 23 to clarify the language recited in those claims, and in particular, to explicitly recite limitations that were implicitly present prior to the amendments, for emphasizing the patentable distinctions over the art of record. As such, it is submitted that neither Hegde nor Martin, alone or in combination, disclose or suggest, "a flow state communication channel ... that is independent of one or more associated data flows," as recited in similar form throughout amended claims 1, 12, 23 and 32.

Applicant respectfully directs the Office's attention to Hegde at col. 14, lines 1-19 and FIG. 3, which discloses forwarding unresolved packets to all ports, except the port where the packet was received, as stated at col. 14, lines 6-9. Referring now to FIG. 3 and col. 6, lines 1-17 in Martin, a dispatcher 30 determines which network links 20.1-20.4 to use for dispatching messages sent to server computers 16.1-16.4. These link selections are based on network traffic load on the links 20.1-20.4. Martin, however, does not disclose how unresolved packets are resolved, let alone establishing separate channels for providing data flow handling information.

Modifying Hegde's dispatcher 30 to incorporate Martin's teachings relating to forwarding unresolved packets to all ports not only teaches away from Martin, it would render the dispatcher 30 inoperable for its intended purpose. When the teachings from a secondary reference would render an invention disclosed in a primary reference inoperable for its purpose, the references cannot be combined to form the basis of a proper

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§103(a) rejection. It is further respectfully submitted that even if the teachings from these references could be properly combined, they would still fail to disclose or suggest all of the limitations recited in claims 1, 12, 23 and 32.


In view of the foregoing remarks, the Office is respectfully requested to reconsider and withdraw the rejection of claims 1, 12 and 23 under §103(a). Since claims 2-11, 13-22, and 24-30 depend from and include the subject matter recited in claims 1, 12, and 23, respectively, they are patentably distinct at least for the same reasons discussed above.

Applicant respectfully submits that the foregoing remarks and amendments address all of the remaining issues for the above-identified application. Accordingly, it is submitted that this case stands in condition for allowance. In the event that there are any outstanding matters remaining in the above-identified application, however, the Office is invited to contact the undersigned to discuss this application.

Respectfully submitted,

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